

BULLETIN

Docket No. INS No. 98-029-AB

DATE: September 21, 1998
TO: All Licensed Insurers
FROM: Charles N. Blossom, Commissioner
SUBJECT: **Examination Costs of Agents and Brokers**

This bulletin is to advise all licensed insurers that the Department is considering legislation for the 1999 Session of the New Hampshire General Court that will change the provisions of RSA 400-A:37 VII. Examination Expense such that insurers will become responsible for the costs incurred by the Department when conducting market conduct examinations of their licensed agents and for brokers writing business on their behalf.

Currently, RSA 400-A:37 VII. provides that:

“The insurer or other person examined pursuant to this section shall bear the expense of the examination.”

Recent complaints received by the Department about the conduct of some agents and brokers need further examination and investigation. While RSA 400-A:37 VII. provides a mechanism for the expense of those examinations, this reimbursement is available only if improper conduct is found. The Department's experience has been that collection of the amounts due from agent(s) and/or broker(s) who have engaged in improper conduct is usually impossible.

Because RSA 402:25 Agent's authority provides that:

“While such license remains in force, a foreign company shall be bound by the acts of the person named therein within his apparent authority as its acknowledged agent.”

And, RSA 405:43 Companies' imputed knowledge provides that:

“Companies issuing policies through their agents on applications from brokers shall be charged with the broker's knowledge of facts to the same extent as if he were their agent.”

The Department believes that licensed insurers should bear the direct costs associated with the examination of their agents and brokers.

The Department believes the resulting merits of increased market conduct examinations of licensed agents and brokers will be twofold. First, it will enhance the Department's charge to safeguard the public from agents and brokers acting improperly. And, secondly, it will protect the interests of insurers by focusing on licensed agents and/or brokers who are conducting their operations in violation of the insurance laws and rules of this State.

It is the Department's intention to conduct approximately five or so unannounced market conduct examinations of agents and/or brokers per year. The Department has determined that the estimated cost associated with these examinations will not exceed \$2,500 except in extreme cases. The Department will focus these examinations on agents suspected of violations, usually because of multiple consumer complaints received by the Department.

It is not the Department's intention to single out one insurer for payment, but to spread the cost of the examination among all of the insurers for whom the agent is licensed or for whom the broker writes business. As those insurers will be the direct beneficiaries of the Department's efforts, the Department believes this to be the most equitable distribution of costs with minimal impact on insurers.

Licensed insurers should direct their written comments or questions to the attention of Steven J. Lauwers, Assistant Commissioner, New Hampshire Insurance Department, 56 Old Suncook Road, Concord, N.H. 03301.

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